

Innovation in Arbitration Law: The Case of Delaware

Christopher R. Drahozal

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Abstract:

Delaware has become increasingly active in adopting innovative arbitration laws. In 2009, Delaware adopted a confidential system of “arbitration” conducted by sitting Court of Chancery judges, which was subsequently held unconstitutional as violating the First Amendment right of public access to the courts. In 2015, it enacted the Delaware Rapid Arbitration Act (DRAA), creating a system of expedited arbitration in Delaware. Among other things, the DRAA sets mandatory time limits for the completion of arbitration proceedings (with financial penalties for arbitrators who fail to comply), restricts the degree of court involvement in the arbitration process, and provides for expeditious review of arbitration awards directly to the Delaware Supreme Court.

This Article analyzes the DRAA, Delaware’s most recent innovation in arbitration law. It distinguishes the provisions of the DRAA that require legislative action from those that the parties can themselves establish by contract. It also notes several potential difficulties with and uncertainties caused by the Act. Finally, it comments on the role of Delaware (as opposed to other American states) as an innovator in arbitration law.